

## Chapter 5

# Investigation Committee Report – preliminary issues

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- 5.01** The work of the Committee from late 2004 covered over 20 industrial and reformatory schools. Further modules included the investigation of the career of one abuser, who was employed in a succession of national schools. In addition to these inquiries, other areas examined included the role of the Department of Education, and the funding of the schools.
- 5.02** The work of preparation for the hearings was extensive and time-consuming. The steps included:
- Obtaining statements from the complainants.
  - Locating respondents and obtaining responses from persons named by the complainants.
  - Obtaining responses from Religious Congregations and Orders affected by the allegations.
  - Inviting responses from relevant Government Departments.
  - Extensive discovery of documents was also obtained from: the Director of Public Prosecutions (DPP); An Garda Síochána; the Health Service Executive; and the Irish Society for Prevention of Cruelty to Children (ISPCC). Discovery was also obtained from: the Department of Education and Science; the Department of Health and Children; the Department of Justice Equality and Law Reform; the Orders and Congregations and some dioceses; and, occasionally, from the complainants themselves.
- 5.03** A vast amount of material was received through this process, and over a million documents had to be analysed in detail by the legal team in order to ascertain the relevant information needed for the hearings.
- 5.04** Individual books of evidence and material were produced and furnished for each hearing, and circulated to the numerous parties involved in each particular case, including complainants and respondents and Congregations.
- 5.05** The Investigation Committee had sought to limit the number of lawyers present at the private hearings, in the belief that that would have assisted complainants giving evidence about sensitive or private matters. The Committee referred the matter to the High Court under section 25 of the Commission to Inquire into Child Abuse Act, 2000 for a decision as to whether its proposal was lawful, and the court decided that it was an interference with the constitutional rights of the respondents and Congregations.<sup>1</sup> As a consequence, it was impossible to limit the number of lawyers who attended. A typical Phase II private hearing was attended by a large number of persons at very considerable cost. For example:

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<sup>1</sup> *In Re Commission to Inquire into Child Abuse* [2002] 3 IR 459.

- Chairperson and two Commissioners;
- Registrar;
- stenographer;
- sound engineer;
- senior and junior counsel and solicitor for complainant;
- three members of the Investigation Committee's legal team;
- two senior members of the particular Congregation or Order;
- senior and junior counsel and solicitor for an individual respondent plus the individual respondent;
- the same for a second named respondent if there was one;
- the complainant witness.

**5.06** The result was that it was a daunting experience for a witness to come to the Phase II private hearings. The Committee was conscious of this, and tried to make the occasion as informal as possible and to reduce areas of conflict. Counsel co-operated with the Committee in this respect, and the Committee was appreciative of the manner in which the lawyers for all the different interests conducted themselves in the hearings.

**5.07** A small number of institutions were the subject of a more limited form of investigation than by way of full hearings. In the case of St Joseph's Industrial School, Salthill and St Joseph's Industrial School, Glin, both run by the Christian Brothers, the institutions themselves and the system of management and the nature of the complaints were all very similar to the matters that had been investigated in all the other Christian Brothers' schools; and, as a result, it was unnecessary to have full hearings. Instead, the discovered documentary materials were examined for information as to abuse during the relevant period. Significant documents were sent to appropriate parties for comment, where those parties had not produced the discovered material, and any comments received by way of submission were then taken into account in the chapters on these two institutions.

**5.08** A similar method was adopted in investigating Our Lady of Good Counsel, Lota. This institution was the subject of a series of six separate Garda inquiries, which were continuing while the Committee was pursuing its work. A limited number of witnesses had already been heard by the Investigation Committee prior to 2003, and that testimony, together with documentary evidence, formed the basis of the chapter on the institution.

**5.09** One category of institution that was not included in full Investigation Committee hearings comprised three schools for deaf children. It was clear that members of the deaf community wanted to participate. In the consultation period that took place in early 2004, Mr Kevin Stanley and other officials of the Irish Deaf Society attended meetings and offered assistance, and were enthusiastic about their members' desire to be part of the investigation process. The numbers of persons (109 in total) who notified the Investigation Committee that they wished to participate in its proceedings in respect of deaf schools were as follows:

- St Joseph's School for Deaf Boys, Cabra – 65
- St Mary's School for Deaf Girls, Cabra – 23
- Mary Immaculate School for the Deaf, Beechpark, Stillorgan – 21.

**5.10** Unfortunately, it proved impossible to arrange full hearings for these institutions. The principal difficulty was in getting statements from a sufficient number of former residents of these institutions. There had been a protracted and unproductive correspondence between the

Committee and solicitors representing the great majority of the deaf complainants about the taking of statements, and the period of time that was necessary for that purpose, and the cost of doing so. The result was that little had been achieved even by late 2005. It was impracticable to prepare all the necessary materials and to arrange hearings in these cases. Obtaining statements from complainants was only the first step in putting all the pieces together to enable full investigative hearings to take place. Since that first step was not satisfactorily completed in a reasonable time, there was no question of all the other necessary procedures being completed so as to enable hearings to take place.

**5.11** The Investigation Committee had, since early 2005, been implementing a programme of interviewing witnesses who were not heard in private hearings, and decided to offer that facility to all of the deaf complainants. The Committee put in place appropriate interpretative services, and witnesses responded in considerable numbers. A total of 78 persons in this category were interviewed.

**5.12** In the circumstances, limited investigation of these institutions was also carried out by way of analysis of documentary material.

### **The programme of interviewing witnesses**

**5.13** A scheme of interviews was introduced in early 2005, following the hearings into St Joseph's Industrial School, Ferryhouse and St Patrick's Industrial School, Upton. Selection of witnesses had previously been made in those investigations by examining the documents that had been submitted, and a proportion of the potential complainant witnesses had been called to testify. There remained a substantial body of witnesses who had the option of transferring to the Confidential Committee, but whose first choice was to contribute to the work of the Investigation Committee.

**5.14** In early 2005, the Committee devised another means of including complainants in the work of the Investigation Committee: in a progress report and outline of work to be done, the Committee published on its website details of an interview process that it was introducing. It proposed to invite complainants for interview, which would be carried out by members of the legal team.

**5.15** For those institutions which the Committee was not investigating by way of hearings, all the complainants were invited for interview.

**5.16** In respect of three large institutions – Artane, Letterfrack and Daingean – all complainants who were not called to give evidence before the investigation into these institutions were invited to be interviewed by a member of the legal team.

**5.17** In respect of the inquiries into the remaining institutions heard by the Investigation Committee, all complainants were invited to give evidence, and those that did not want to proceed to the hearing were offered an interview. Many complainants proceeded in this manner.

**5.18** The interviews had two primary purposes: first, to furnish a means of checking or cross-referencing, to ensure that all relevant topics arising in an institution had been properly considered; and, second, to give everyone who wished to do so a means of participating in the work of the Investigation Committee.

**5.19** The interview process was greatly valued, and witnesses participated in substantial numbers. A total of 552 people ultimately attended for interview.

## The Investigation Committee's method of investigation

- 5.20** The Committee made clear, at the meeting of 7<sup>th</sup> May 2004, the difficulties of identifying and naming individual respondents accused of abuse. Having considered all the issues, the Committee abandoned the policy of naming individual abusers. This policy change paved the way for the Committee to concentrate on the area of investigating further into neglect and emotional abuse issues.
- 5.21** The investigation into most schools consisted of a Phase I public hearing, which allowed the Congregation involved the opportunity of presenting their case as to how their institutions were managed. It also gave the Congregation the opportunity of making any concessions or arguments that it thought relevant before the hearing of the evidence in private.
- 5.22** Most Congregations made concessions of some kind at these hearings, particularly in regard to questions of emotional abuse and neglect. They also furnished useful background materials which it would have been difficult for the Investigation Committee to assemble about the history of the Institution and relevant administrative details. Above all, the Phase I hearings outlined the position that the Congregation was adopting on the questions of abuse in the Institution.
- 5.23** There was no cross-examination at the Phase I hearing. Counsel for the Investigation Committee took the Congregation witness through the evidence and invited responses, and the Congregation's own counsel was then able to examine the witness further to clarify any matters. Complainants and their legal representatives were present at these hearings, but they did not have a role in questioning the witnesses.
- 5.24** Phase II hearings, the private hearings into specific allegations of abuse in institutions, then commenced. When the private hearings were completed, the Phase III public hearings enabled the Congregations to respond to the evidence.
- 5.25** The Phase III public hearings also included the Departments of Education and Science; Justice, Equality and Law Reform; and Health and Children, as well as hearings into the Irish Society for the Prevention of Cruelty to Children (ISPCC).
- 5.26** At these Phase III hearings, legal teams that had represented substantial numbers of complainants were engaged by the Investigation Committee to cross-examine relevant witnesses. Counsel and solicitors on those occasions took the role of *amicus curiae*, which is that of a person whose role is to assist a court in a case where it is thought necessary to have interests represented when they are not parties in the action. The Committee expresses its gratitude to counsel and solicitors for performing this role so ably and helpfully. Submissions were sought and received from complainants and respondents heard following these hearings.

## Hearings

- 5.27** The Rosminian Institute was unique among the Religious Congregations and Orders in its approach. Management and members were candid in their admissions, they were supportive of the work of the investigation, and they were sympathetic to their ex-residents. Other Congregations adopted a more defensive attitude and were more sceptical of evidence of abuse.
- 5.28** Some Congregations appeared more concerned with discrediting the complainant than with finding out what had happened in its institution. No person or body should have been more concerned with uncovering instances of abuse than the Religious Congregations that ran the schools. However, some Congregations perceived allegations as an attack on the whole Congregation and adopted a defensive position, which militated against the truth emerging.

## Contamination

- 5.29** Difficulties arose from the matters being investigated and the circumstances surrounding the establishment of the Commission and the Residential Institutions Redress Board.
- 5.30** The events in question happened a long time ago. Most industrial schools had been closed by the mid-1970s. When the Investigation Committee hearings took place, many of the incidents recalled had taken place at least 40 years prior to that.
- 5.31** The Investigation Committee heard from witnesses some of whom had endured lives of hardship and poverty, and many had been afflicted by physical illnesses and psychological problems. Some had experienced substance addictions that tended to impair memory. Many witnesses at private hearings acknowledged such misfortunes.
- 5.32** Outside events had the potential to influence evidence given by witnesses. Following the ‘Dear Daughter’ programme in 1996, which documented allegations of abuse in Goldenbridge Industrial School, there was a flood of publicity about abuse in institutions. There were television programmes such as ‘States of Fear’, which were broadcast by RTE in April and May 1999 dealing with institutional abuse, which attracted enormous public interest and comment. The largest institutions such as Artane and Goldenbridge were often discussed in all the media, including the internet. Books of reminiscences appeared, and one major study, ‘Suffer the Little Children’ by Raftery and O’Sullivan,<sup>2</sup> was published.
- 5.33** The campaign for recognition and redress continued after the establishment of the Commission. Many meetings were held by victims’ groups in Ireland and the UK. They were also used to organise complainants to participate in the Commission’s work. These meetings were well attended. Members of the audience participated and, on occasions, recounted their experiences of abuse in the institutions. These meetings were another source of potential influence and suggestion to witnesses.
- 5.34** Attending meetings to press for a Redress Scheme, and to provide generally for advantageous conditions for victims of abuse, was not wrong, and it was entirely to be expected that people would attend and would describe their experiences. Witnesses who attended the meetings, however, were very defensive and reticent about what went on. The Committee is satisfied that, at some of these meetings, individual accounts of abuse were recounted in detail and individuals were identified.
- 5.35** Yet another source of potential pressure and influence on witnesses complaining of abuse was to be found in the developments that led to the enactment of the Statute of Limitations (Amendment) Act, 2000.
- 5.36** The story of the amendment to the Statute of Limitations Act, 1957 can usefully begin with the Taoiseach’s announcement of the package of redress measures on 11<sup>th</sup> May 1999, when this Commission was also announced. The Taoiseach announced that the Government would amend the 1957 legislation to enable victims to bring claims for sexual abuse, but it was not anticipated at the time that physical abuse would be included. The progress of the Amendment Bill through the Oireachtas was followed closely, and was discussed at meetings of victims groups all over Ireland and the UK. The Government referred the question to the Law Reform Commission, whose consideration and report also gave rise to public interest. The solution that was put in place in the Statute of Limitations (Amendment) Act, 2000 was confined to sexual abuse. The Residential Institutions Redress Act, 2002 was not so confined, and extended to the full range of abuse with

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<sup>2</sup> Mary Raftery and Eoin O’Sullivan, *Suffer the Little Children* (New Island, 1999).

which this investigation is concerned. There was an important period during which there was real concern that compensation might be restricted to cases of sexual abuse.

- 5.37** The amendment to the Statute of Limitations conferred an entitlement to bring a late claim on persons who, by virtue of the trauma associated with sexual abuse, had been unable to bring a claim within the existing limitation period. In addition, it provided for an extension of time to claim for victims who had spoken about their experiences and who therefore would have had difficulty in proving the necessary psychological impairment required by the Act. Such a person qualified by fulfilling one of two conditions, namely: (a) the claimant had consulted a solicitor and had been advised that the claim was statute barred; or (b) the claimant had made a report to An Garda Síochana about sexual abuse within one year prior to the enactment of the legislation.
- 5.38** People giving evidence about events that occurred many years ago in their childhoods might not be precise on detail. Many of them were young children in large institutions, in which the adults dressed the same and were known as ‘Sister’, ‘Brother’, ‘Father’ or by surnames, religious names or nicknames. In addition, staff came and went, and sometimes stayed only for very short periods of time.
- 5.39** Potential distorting influences on evidence were not confined to complainants. While some ex-staff members were extraordinarily candid in their acknowledgment of abuses in institutions, others were unable to recall major incidents or practices that were features of them. There was a tendency to shut out unpleasant and embarrassing incidents. The inability of some former staff members to recall any unfavourable aspects of their experiences in institutions was not inspired by a desire to mislead the investigation. It was, rather, incapacity to accommodate the fact that people whose mission was spiritual and religious could have behaved cruelly, basely and self-indulgently, and that colleagues might have stood by or covered up such wrongdoing.
- 5.40** It was not always easy for respondent witnesses to testify to the shortcomings, either of themselves or of their colleagues, when they had to do so in the presence of senior members of their own Congregations.

## **Anonymity**

- 5.41** In the Position Paper published in May 2004, the Investigation Committee considered the question of naming individuals who were believed to be guilty of committing abuse of children. The Committee subsequently decided to implement the policy that was set out in the Position Paper.
- 5.42** The amending legislation in 2005 only permitted the naming of persons who had been convicted in the criminal courts of abuse of children. The legislation did not require that the person to be named should have been convicted of the specific abuse that was the subject of the report. In other words, if a person had been convicted of abuse of children of some nature at some time, it was permissible under the legislation for him or her to be named as being responsible for abuse in some quite different circumstances or at a different time.
- 5.43** Even under the unamended legislation, naming some individuals was always going to be fraught with difficulty and inconsistency. The probability was that only a very small number of persons would actually be named. This issue was debated in the Position Paper, and outlined to the public meeting of the Investigation Committee. The supposed benefits of being able to name persons who committed abuse were outweighed by the disadvantages.
- 5.44** The Report does not identify individuals by name in respect of any abuse that they committed.
- 5.45** The anonymity of complainants is guaranteed under the Act.

- 5.46** Although the process is called anonymising, that is a relatively convenient and pronounceable, but somewhat misleading, way of referring to the actual process, which is protecting persons living or dead by giving them pseudonyms. The mechanics of the process are that respondents are given names from a catalogue of names that have a common source. For example, all the Christian Brothers are given names of French origin. In other cases, Spanish or Italian names are used. As far as possible, the names have been chosen with a view to emphasising the fact that they are pseudonyms.
- 5.47** Some names have not been anonymised. Officials of the Department of Education are generally described by the names they used in correspondence or reports.

